



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/12/05	Bill No:	AB 377
Tax:	Diesel Fuel Tax	Author:	Maze
Related Bills:			

BILL SUMMARY

This bill would require the California Highway Patrol (CHP) to conduct inspections of diesel fuel contained in highway vehicle fuel tanks for the purpose of determining the presence of dyed (untaxed) diesel fuel.

Summary Amendments

The April 12, 2004, amendments delete the provisions that would have required the Board, in consultation with the CHP, to undertake measures that provide for the testing of the fuel in motor vehicles operating on the streets and highways that are suspected of using the described tax exempt diesel fuel.

ANALYSIS

Current Law

Under the Diesel Fuel Tax Law (Part 31, Division 2 of the Revenue and Taxation Code, commencing with Section 60001), the state imposes an excise tax of \$0.18 per gallon on the removal of diesel fuel at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person, unless specifically exempted. Specifically exempted from the payment of taxes is diesel fuel that satisfies the specified dyeing and marking requirements.

As stated previously, dyed diesel fuel is diesel fuel that is dyed under United States Environmental Protection Agency or the IRS rules for high sulfur diesel fuel or low sulfur diesel fuel or any other requirements subsequently set by the United States Environmental Protection Agency or the IRS and considered destined for nontaxable, off-highway uses.

Section 60101 of the Diesel Fuel Tax Law provides that no person may operate or maintain a motor vehicle on any public highway in this state with **dyed diesel fuel in the fuel supply tank**. This prohibition does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity, or if the person is an intercity bus operator who is registered as an interstate user.

Section 60603 of the Diesel Fuel Tax Law authorizes officers (including the CHP) or employees of the state to conduct inspections at any designated inspection site where evidence of activities of diesel fuel tax evasion may be discovered. A designated inspection site includes any state highway inspection station, weigh station, agricultural

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inspection station, mobile station, or other location designated by the IRS to be used as a diesel fuel inspection site. A designated inspection site must be identified as a diesel fuel inspection site.

Officers or employees may detain any vehicle for the purpose of inspecting its fuel tanks to examine for the presence of dyed diesel fuel, as well as take and remove samples of diesel fuel in reasonable quantities as necessary to determine its composition. Any person that refuses to allow an inspection may be fined one thousand dollars (\$1,000) for each refusal. This penalty is in addition to any other penalty or tax that may be imposed upon that person or any other person liable for tax or penalty.

In addition, Section 60105 imposes a penalty upon any person that holds for use or uses dyed diesel fuel for a use other than a nontaxable use and that person knew, or had reason to know, that the diesel fuel was so dyed. The amount of the penalty for each violation specified is the greater of ten dollars (\$10) for every gallon of diesel fuel involved, **or** the product of one thousand dollars (\$1,000), and the total number of penalties, including the penalty currently being determined, imposed on the person.

Proposed Law

This bill would add Section 60601.5 to the Diesel Fuel Tax Law to require the CHP to conduct inspections for the presence of dyed diesel fuel in the fuel tanks of diesel-powered highway vehicles. The CHP would be required to notify the Board whenever it appears dyed diesel fuel is present in the fuel tank of a diesel-powered highway vehicle.

The provisions of this bill would become effective January 1, 2006.

In General

The Board currently contracts with the California Air Resources Board (CARB) to conduct inspections for the use of dyed diesel fuel on highways in this state and dyed diesel fuel analysis. Inspections for dyed diesel fuel are conducted in conjunction with inspections under the CARB's Heavy-Duty Vehicle Inspection Program, which tests heavy-duty trucks and buses for excessive smoke and tampering. The CARB inspectors are authorized to conduct unannounced roadside tests at various locales, such as:

- CHP weigh stations
- Randomly selected roadside locations
- Fleet facilities

The CARB conducted more than 22,000 dyed diesel fuel inspections in each of the last two fiscal years. From these inspections, 90 vehicles in fiscal year 2002-03 and 89 vehicles in fiscal year 2003-04 were suspected with dyed diesel fuel. Samples of suspected dyed diesel fuel are removed and analyzed for composition by the CARB. The Board's current 3-year contract with the CARB will expire on July 31, 2005.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to provide a greater enforcement presence to deter evasion and to enhance voluntary compliance.
2. **The provisions of this measure would not be problematic to administer.** Requiring the CHP to conduct additional inspections for the presence of dyed diesel fuel would not be problematic for the Board. The CHP is currently authorized under current law to do so.

COST ESTIMATE

The administrative costs incurred would be based on the number of inspections conducted by the CHP and related billings generated for the diesel fuel tax and the penalty. Administrative costs would also be incurred for billings petitioned for redetermination by the taxpayer. These cost would be insignificant (under \$10,000).

REVENUE ESTIMATE

The provisions of this bill could have a positive impact on the diesel fuel tax collected due to the additional inspections conducted by the CHP. However, the BOE has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

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